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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,056

09/22/2003

Sean McFerran

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08/11/2004

CROMPTON, SEAGER & TUFTE, LLC  
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MINNEAPOLIS, MN 55403-2420

EXAMINER

SIRMONS, KEVIN C

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/667,056

Applicant(s)

MCFERRAN, SEAN

Examiner

Kevin C. Sirmons

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: a radial line through the center of the lumen. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 10 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Alchas U.S. Pat. No. 5,030,210.

Alchas discloses a microcather comprising: an elongate shaft (30); a guidewire port (40); a control valve (34);

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the device of Alchas is fully capable of performing the function as set forth in claim 1, as to claim 2, (34 and 38); as to claim 3, (figs. 7-10); as to claims 4 and 5, (the slit (42) is angled relative to the longitudinal axis); as to claim 6, the device of Alchas is capable of performing the function of claim 5); as to claims 10, 12, (figs. 7-10); as to claims 13-17, (see above rejections).

Claims 1-6, 10 and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Friedman U.S. Pat. No. 1,719,428.

Friedman discloses a microcather comprising: an elongate shaft (1); a guidewire port (11); a control valve (8); the device of Friedman is fully capable of performing the function as set forth in claim 1, as to claim 2, (figs. 1-2); as to claim 3, (figs. 1-2); as to claims 4 and 5, (7 and 10); as to claim 6, the device of Friedman is capable of performing the function of claim 5); as to claims 10, 12 (figs. 1-2) as to claims 13-17, (see above rejections); as to claims 18-20, (figs. 1-7).

Claims 1, 6, 7, 10 and 12-17 rejected under 35 U.S.C. 102(b) as being anticipated by Yurek et al U.S. Pat. No. 5,690,644.

Yurek discloses a microcather comprising: an elongate shaft (20); a guidewire port (52); a control valve 53); the device of Yurek is fully capable of performing the function as set forth in claim 1; as to claims 6 and 7, (figs. 1-7); as to claims 10, 12, (fig. 1-7); as to claims 13-17 (see above rejection).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yurek et al and Friedman and Alchas.

The above-mentioned inventors disclose the microcatheter substantially as claimed except for various ranges in size of the guidewire port aperture, length of the angled slit. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to vary the size of various part of a component, since such a modification would have involved a mere change in the size of a component. A mere change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (1955). Furthermore, applicant has not disclosed that the above limitations provides an advantage, is used for a particular purpose, or solves a problem in the art.

### *Conclusion*

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

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Kevin C. Sirmons

Patent Examiner

98/4/04

A handwritten signature in cursive script, appearing to read "Sirmons".